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Attorney for Plaintiffs, DAVID J. LEE and
DANIEL R. LLOYD

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID J. LEE, and DANIEL R. LLOYD,
as individuals and, on behalf of others
similarly situated,

Plaintiffs,

vs.

AMERICAN EXPRESS TRAVEL
RELATED SERVICES COMPANY, INC.,
a New York corporation, AMERICAN
EXPRESS CENTURION BANK, a Utah
corporation, AMERICAN EXPRESS
BANK, FSB, a Utah corporation, and
DOES 1, through 100, inclusive,

Defendants.

Case No.: C-07-4765 CRB

PLAINTIFFS/APPELLANTS' NOTICE
OF INTENT TO DESIGNATE PORTIONS
OF COURT TRANSCRIPT AND
STATEMENT OF ISSUES

TO DEFENDANTS AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY INC., AMERICAN EXPRESS CENTURION BANK, AND AMERICAN EXPRESS BANK, FSB, AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE THAT PLAINTIFFS/APPELLANTS DAVID J. LEE AND DANIEL R. LLOYD, have ordered copies of the court transcript from the November 30, 2007, hearing regarding the Defendants' motion to dismiss the Plaintiffs' complaint, and intend to use it in connection with their appeal.

In addition, Appellants will pursue the following issues on appeal:

1. Do Plaintiffs have standing under Article III of the United States' Constitution ("Art. III"), California's Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 et seq.)("CLRA"), and California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et seq.)("UCL") to maintain their action including

a. Do American Express credit, charge, gift, and dining card holders, respectively, challenging the unconscionability of terms of the American Express arbitration agreement and/or cardmember agreement (excluding the arbitration provision), respectively, and that unconscionability affects a violation whether a violation of the CLRA and/or the UCL have to seek to or actually participate in an arbitration in order to have standing under Art. III, the UCL, and/or the CLRA when the Arbitration Provision explicitly provides 'Claim' [that are subject to mandatory arbitration under the Provision] means any claim, dispute or controversy between you and us arising from or relating to your Account, this Agreement ... and any other related or prior agreement that you may have had with us, or the relationships resulting from any of the above Agreements ('Agreements'), **except for the validity, enforceability or scope of this Arbitration Provision or the Agreements,**" or at all?

1 b. Is not getting that for which one paid -- in this instance, an enforceable
2 contractual right to mandatory arbitration contained in the American Express cardmember
3 agreement for which Plaintiffs paid an annual fee -- an injury sufficient to establish standing
4 under Art. III, the CLRA and/or the UCL?
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6 c. Does the violation of the statutory rights given by the CLRA to not have
7 unconscionable terms inserted in their contracts pursuant to Cal. Civ. Code § 1770(a)(19), and
8 by Civil Code § 1670.5, respectively, provide Plaintiffs with standing under Art. III, the CLRA
9 and/or UCL?
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11 2. Do unusual circumstances exist requiring, upon reversal and/or remand to the United
12 States District Court for the Northern District of California, reassignment of his action to a new
13 District Court Judge?"
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15 Dated: January 10, 2008
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18 Matthew S. Hale, Counsel
19 For Plaintiffs/ Appellants
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